

Group II Claim 67, drawn to a method for caring for, making up and/or treating at least one keratinous tissue, classified in class 424, subclass 401, 70.1+.

Applicant respectfully traverses the restriction requirement. However, to be fully responsive to the restriction requirement, Applicant elects, with traverse, the invention of Group I, Claims 1-66 and 68-152.

Applicant respectfully refers the Examiner to M.P.E.P. § 803, which sets forth the criteria and guidelines for Examiners to follow in making proper requirements for restriction. The M.P.E.P instructs the Examiner as follows:

If the search and examination of an entire application can be made without serious burden, the Office must examine it on the merits, even though it includes claims to independent or distinct inventions.

M.P.E.P. § 803 (emphasis added).

Here, Applicants respectfully submit that the Examiner has not demonstrated that examining Groups I and II will constitute a serious burden. Applicants respectfully submit that a search of Groups I and II would not be burdensome, as all of the claims recite, *inter alia*, a composition comprising at least one PEG fatty acid diester of formula (1) and at least one salt of a fatty acid gelling agent. Moreover, Groups I and II are represented by the Examiner to be classified in the identical class AND subclasses. Thus, the search and examination of Group I should substantially, if not completely, overlap the necessary search and examination for Group II.

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III. Election of Species Requirement

In the Office Action, the Examiner also required election under 35 U.S.C. § 121 of one species of each of the following: (a) PEG fatty acid diesters of formula (1) and (b) fatty acid gelling agents.

Applicant respectfully traverses these election requirements. However, to be fully responsive, Applicant elects, with traverse, the following species. In response to the Examiner's requirement for election of one species of (a) PEG fatty acid diesters of formula (1), Applicant elects, with traverse, PEG 150 Dibehenate. PEG 150 Dibehenate 80 is disclosed, for example, at paragraph [040], and Examples 1 and 2. The election of PEG 150 Dibehenate is believed to read on claims 1-3, 5, 8, 10, 15-73, 75, 78, 80, 85-114, 116, 119, 121, and 126-152. In response to the Examiner's requirement for election of the at least one fatty acid gelling agent, Applicant elects, with traverse, sodium stearate. This fatty acid gelling agent is disclosed at, for example paragraph [043], and Examples 1 and 2. Sodium stearate is believed to read on claims 1-29, 30, 32-98, 100, 102-139, 141, and 143-152.

Applicant refers the Examiner to M.P.E.P. § 809, which sets forth the criteria and guidelines for Examiners to follow in making proper requirements for election of species requirements. Applicant expects, pursuant to M.P.E.P. § 809 and 37 C.F.R. § 1.141, that the Examiner's search will be expanded, and other species will be considered once the elected species are found patentable.

In view of the foregoing remarks, Applicant believes the election requirements to be in error, and respectfully requests that the requirements be withdrawn.

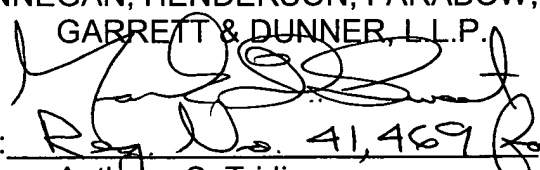
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If there is any fee due in connection with the filing of this Response, please
charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: August 29, 2003

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